IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEX.COM, INCORPORATED	:	
	:	
v.	:	
	:	**CIVIL ACTION**
DOMAIN NAME ACQUISITION GROUP, LLC	:	
	:	**NO.**
	:	
And	:	**JURY TRIAL DEMANDED**
	:	
ANDREW MILLER	:	

And

PETER HUBSHMAN

And

DEAL JAM, LLC

COMPLAINT

1. Plaintiff, Sex. Com, Incorporated, is a Delaware corporation, with an address of 203 NE Front Street, Suite 101, Milford, Kent County, Delaware, 19963.

2. Defendant, Domain Name Acquisition Group, LLC (hereinafter "DNAG") is a corporation with its principle place of business located at 123 Newbury Street, Second Floor, Boston, MA 02116.

3. Defendant, Deal Jam, LLC (hereinafter "Deal Jam") is a corporation with its principle place of business located at 123 Newbury Street, Second Floor, Boston, MA 02116.

Dockets.Justia.com

4. It is alleged and therefore believed, Defendants DNAG and Deal Jam are corporations that acquire options to purchase and/or purchase domain names and thereafter sell same to others.

5. It is alleged and believed, Defendants, Andrew Miller and Peter Hubshman, are owners and principles in both Defendant DNAG and Deal Jam, with a principle place of business located at 123 Newbury Street, Second Floor, Boston, MA 02116.

6. At all times relevant hereto Defendant DNAG and Deal Jam acted and/or failed to act by and through its authorized agents, servants and employees.

7. Jurisdiction in the Eastern District of Pennsylvania is based upon 28 U.S.C. §1332 as the amount in controversy, exclusive of interest and costs, exceeds $75,000.00 and the parties are citizens of different states.

FACTUAL BACKGROUND

8. On August 12, 2005, Plaintiff's authorized agents and Defendants signed a URL Purchase and Sale Assignment Deposit Agreement. A true and correct copy of the URL Purchase and Sale Assignment Deposit Agreement (hereinafter referred to as "Agreement") is attached hereto, made a part hereof, and marked as Exhibit "A". The Agreement was solely drafted by Defendants and/or its Attorneys.

9. The Agreement drafted solely by Defendants and/or its Attorneys centered around the purchase of the domain name "Sex.Com" as well as a future Consulting Agreement to be negotiated between the parties.

10. The agreement drafted solely by Defendants and/or its Attorneys stated the parties intended to complete documentation and fully fund the transactions no later than Tuesday, August 16, 2005 at 5 pm.

11. The Defendants, who solely drafted the Agreement, made “time of the essence” for completing the contracts and closing documents and closing any deal. Despite this fact, Defendants did not present Plaintiff’s Agents with a copy of proposed contracts and closing documents until August 15, 2005, at about 3:00pm.

12. The Agreement solely drafted by Defendants and/or its Attorneys required Plaintiff to tender a deposit of $500,000.00 directly to Defendants to be applied to any acquisition and assignment of the Sex.Com domain name.

13. Plaintiff immediately tendered said deposit of $500,000.00 to Defendants.

14. The Agreement stated the $500,000.00 deposit was to be refundable if Defendants are unwilling or unable to complete the transaction.

15. After Plaintiff received a copy of the proposed contracts and closing documents, again drafted solely by Defendants and/or its Attorney, on August 15, 2005, at a time about 3:00pm, Plaintiff requested its Counsel, Robert M. Silverman, Esquire, review same and make suggested changes for Plaintiff’s protection.

16. The first change suggested by Plaintiff's Counsel was that he and his firm act as escrow agent, given the significant purchase price and because Plaintiff had never done business with Defendants. Plaintiff's Counsel communicated the need to change the Escrow Agent for his client's protection to both the Defendants' agents and defendants' Counsel and stated once Defendants agree to the change, they could move on to other necessary changes to the documents and contracts. Both Defendants and its Counsel absolutely refused to make the change in Escrow Agent and thereby became unwilling and unable to finalize the intended domain name purchase and future consulting agreement.

17. Prior to August 16, 2005 at 5:00pm, Counsel for Plaintiff again made his request for a change in Escrow Agent and just as importantly, that defendants waive the "time of the essence" clause in the Agreement. Neither Counsel for Plaintiff nor Plaintiff received a response to said request prior to 5:00pm on August 16, 2005. Again, when Defendants refused to extend the "time of the essence" closing, they became unwilling to conclude the intended transactions.

18. After the Agreement expired on August 16, 2005 at 5:00pm, Plaintiff's Counsel received a letter from Defendants' Counsel again reaffirming its refusal to appoint Mr. Silverman to act as Escrow Agent.

19. Despite repeated demands by Counsel for Plaintiff, Defendants refuse to refund Plaintiff's deposit of $500,000.00.

COUNT I
BREACH OF CONTRACT

20. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

21. Plaintiff and Defendant signed the URL Purchase and Sale Assignment Deposit Agreement, attached as Exhibit “A.”

22. The Agreement drafted solely by Defendants and/or its Counsel states time is of the essence and if Defendants are unwilling or unable to complete the Domain Name and Consulting Agreement transactions, a refund of the deposit must be made .

23. Plaintiff tendered $500,000.00 as a deposit according to the terms of the Agreement.

24. Despite reasonable attempts to negotiate, the parties were unable to complete the transaction because Defendants were unable and unwilling to proceed with the transactions.

25. Despite Plaintiff’s repeated demands for a refund, the deposit of $500,000.00 has not been returned.

26. Defendants’ intentional refusal to refund the deposit is a breach of the Agreement between the parties and a breach of all obligations Defendants incurred upon entering into said Agreement.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants in the amount of $500,000.00, together with interest thereon.

COUNT II
WRONGFUL CONVERSION

27. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

28. Plaintiff avers Defendants gained possession of the $500,000.000 deposit by theft, trick, misappropriation and under false pretenses, without entitlement or justification.

29. Defendants engaged in conduct alleged in the above paragraphs intending to interfere with Plaintiff's ability to enter into a contract for sale.

30. After Defendants became unwilling to perform, Defendants had no claim to Plaintiff's deposit, but acted otherwise.

31. At no time did Defendants act in good faith.

32. Defendants drafted and signed the Agreement knowing the $500,000.00 deposit paid by Plaintiff was refundable if Defendants became unwilling or unable to complete the transactions.

33. Plaintiff fully complied with the terms of the Agreement and at all material times was ready, willing and able to conclude the intended transactions. In furtherance of closing the transactions, agents of Plaintiff formed a separate corporation and deposited necessary funds in a separate bank account titled "Sex.com, Inc."

34. Due to Defendants' unwillingness to complete the transactions, Plaintiff was entitled to a refund of the deposit.

35. Defendants refused to return Plaintiff's deposit.

36. Defendants have no claim for the possession of said deposit, under any lawful circumstances.

37. Defendants, through their scheme to defraud and extort funds from Plaintiff, obtained possession of Plaintiff's funds by theft and trick, and converted it for Defendants' use, including Defendant, Andrew Miller and Peter Hubshman's personal use.

38. Plaintiff has suffered damages as a result of Defendants' unlawful conversion of her $500,000.00 deposit.

39. Defendants' conduct has deprived Plaintiff use, possession and enjoyment of its property/funds.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants in the amount of $500,000.00, together with interest thereon.

COUNT III

FRAUD IN THE INDUCEMENT

40. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

41. Defendants, including Andrew Miller and Peter Hubshman, knowingly and intentionally sought and coerced Plaintiff into signing the Agreement by way of repeated untruths regarding the domain name Sex.Com, about other competing offers for the domain name Sex. Com, and various other material and relevant exaggerations and untruths.

42. Defendants, including Andrew Miller and Peter Hubshman, entered into the Agreement with full knowledge that Plaintiff's Agent's signatures were obtained by fraud and material misrepresentations.

43. Based upon said fraud in the inducement, the Agreement is null and void, yet Defendants refuse to refund Plaintiff's deposit.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in the amount of $500,000.00 together with interest thereon.

KIMMEL & SILVERMAN, P.C.

By:__________________________________

ROBERT M. SILVERMAN, ESQUIRE
Attorney for Plaintiff
30 East Butler Pike
Ambler, Pennsylvania 19002
(215) 540-8888